

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

BILLY DEVOYNNE BOOSE,)
)
Petitioner,)
)
v) Civil Action No.2:08cv482-SRW
) (WO)
JEFFERY KELLER, *et al.*,)
)
Respondents.)

ORDER

This cause is before the court on a 28 U.S.C. § 2241 petition for habeas corpus relief filed on or around June 16, 2008, by federal inmate Billy Devoyne Boose (“Boose”). Boose argues that a Federal Bureau of Prisons (“BOP”) regulation excluding him from eligibility for early release under 18 U.S.C. § 3621(e) upon completion of the Residential Drug Abuse Program violates his rights and violates the provisions of § 706(2)(A) of the Administrative Procedure Act.

DISCUSSION

A federal prisoner who requests habeas corpus relief under 28 U.S.C. § 2241 must first exhaust his administrative remedies before seeking relief from this court. *Gonzalez v. United States*, 959 F.2d 211 (11th Cir. 1992). The BOP has established regulations that set forth the procedures that a prisoner must follow before seeking relief from a district court. See 28 C.F.R. §§ 542.10 *et seq.*; *United States v. Lucas*, 898 F.2d 1554, 1556 (11th Cir. 1990). These regulations govern formal review of inmate complaints relating to any aspect of their imprisonment and specify the procedures that inmates must pursue before attempting

to seek relief in federal court. *United States v. Herrera*, 931 F.2d 761, 764 (11th Cir. 1991). If, and only if, an inmate has pursued his administrative remedy he may seek relief in federal court. *Id.* “Exhaustion of administrative remedies is jurisdictional” when a petition is filed pursuant to 28 U.S.C. § 2241 for release from federal prison. *Gonzalez*, 959 F.2d at 212; *Winck v. England*, 327 F.3d 1296, 1300 n.1 (11th Cir. 2003).

A review of the habeas petition, the respondents’ answer, and the evidentiary materials filed in this case establishes that Boose has not yet exhausted his available administrative remedies with respect the claims presented in his petition. This court does not deem it appropriate to rule on the merits of Boose’s claims without first requiring that he exhaust available administrative procedures established by the BOP. Consequently, the Magistrate Judge concludes that the petition for habeas corpus relief should be dismissed without prejudice so that Boose can pursue his available administrative remedies.

Accordingly, it is ORDERED that this case be dismissed without prejudice to afford Boose an opportunity to exhaust his administrative remedies in accordance with the procedures established by the BOP.

DONE, this 8th day of September, 2008.

/s/ Susan Russ Walker

SUSAN RUSS WALKER
CHIEF UNITED STATES MAGISTRATE JUDGE